

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ROCKY JOHN RODRIGUEZ,) CASE NO. C07-0640-RSL
09)
Petitioner,)
10)
v.) REPORT AND RECOMMENDATION
11)
ROBERT J. PALMQUIST, Warden,)
Federal Detention Center, et al.,)
12)
Respondents.)
13 _____)

14 Petitioner is a federal prisoner who is currently incarcerated at the Federal Detention
15 Center at SeaTac, Washington. He is serving an eighteen month sentence imposed following his
16 conviction on a charge of unlawfully possessing a firearm in the United States District Court for
17 the District of Idaho. (See Dkt. No. 15 at 2.) Petitioner has filed a federal habeas petition
18 pursuant to 28 U.S.C. § 2241 in which he challenges the validity of the regulation issued by the
19 Federal Bureau of Prisons (“BOP”) which categorically limits the class of prisoners eligible for
20 release to community confinement based on the amount of time the prisoner has left to serve.
21 (Dkt. No. 3.)

22 In *Pankratz v. Palmquist*, Case No. C06-1328-RSL, the District Court found that the

01 regulation challenged in these proceedings, 28 C.F.R. § 570.21 (“the regulation”), which limits the
02 amount of time an inmate may spend in community confinement to 10% of the inmate’s sentence,
03 was invalid because it exceeded the authority granted to the BOP under 18 U.S.C. § 3621(b).

04 Respondents have filed a response to the petition in which they set forth essentially the
05 same legal argument advanced in *Pankratz*. (See Dkt. No. 15.) This Court sees no basis on which
06 to distinguish the present case from *Pankratz*. Accordingly, this Court recommends granting the
07 same relief afforded in *Pankratz*: that BOP be directed to review petitioner’s case under the
08 factors outlined in 18 U.S.C. § 3621(b), without regard to the time limits set forth in the
09 regulation.¹ A proposed order accompanies this Report and Recommendation.

10 DATED this 13th day of July, 2007.

11
12 
13 Mary Alice Theiler
United States Magistrate Judge
14
15
16
17
18
19

20 ¹ Respondents assert in their response to the petition that the BOP has already assessed
21 petitioner’s eligibility for transfer to community confinement based upon the factors outlined in
22 18 U.S.C. § 3621, without regard to the ten percent regulation. (See Dkt. No. 15 at 2.) Petitioner
asserts that he has not been afforded such a review. (Dkt. No. 17 at 3.) There is no evidence in
the record that petitioner has been afforded the review this Court concludes he is entitled to.
Accordingly, this Court deems it appropriate to direct BOP to conduct such a review.